IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2993/03

1. Cadbury India Ltd; having its registered office at 19, Bhulabhai Desai Road, Mumbai 400 026.

2. Mr. Vijay Madali, a shareholder of Cadbury India Ltd. Residing at 4/1, Ramanik Terrace, Co-operative Hsg. Soc., L-26/264 Kastur Park, Shimpoli, Borivali(West), Mumbai 400 092. ... Petitioners.

V/s.

1. The Controller of Legal Metrology having its office at Government Barrack No.7, Free press, Journal Marg, Mumbai 400 021.

2. The Inspector, Legal metrology Thane I Division, Thane.

3. The State of Maharashtra, through the Secretary, Food and Civil Supply Department, having his office at Mantralaya, Mumbai 400 032. ...Respondents.

Shri.E.P. Bharucha Sr.Counsel with Ms.Bharucha and S. Rego i/b P.J. Ranga for petitioners.
Shri.C.R. Sonawane AGP for respondents.

CORAM : V.G. PALSHIKAR & V.M. KANADE, JJ.

DATED : 27/06/2006

ORAL JUDGMENT:-(Per V.M. Kanade, J.)

1. By this petition, petitioners are seeking

appropriate writ, order or direction under Art.226 of the Constitution of India, for quashing seizure memo dated 22/1/2003 which is annexed at Ex.B to the petition whereby all the commodities of the petitioners were seized and also for quashing notice dated 3/2/2003 which is annexed at Ex.F to this writ petition which is issued by respondent No.1 to the petitioners.

2. Brief facts which are relevant for the purpose of deciding this petition are as under.

3. Petitioner No.1 is company registered under the Indian Companies Act, 1913 and is engaged in the manufacture of Chocolates and other products at various factories all over India. Petitioner No.2 is share holder of petitioner No.1 and is a citizen of India. On 22/01/2003 respondent No.2 the Inspector, Legal Metrology Thane I Division, Thane alongwith other officers of respondent No.1 visited the factory of petitioners at Pokhran Road No.1, Thane. They drew samples from the various products manufactured by the petitioners and weighed the same. Except for one product, all the products were found to weigh slightly

more than the declared weight. However, one product namely Cadbury Dairy Milk Chocolate which ought to have weighed 13 gm., weighed slightly less and net deficiency was found to be 0.313 gm. and out of 80 samples units weighed, 14 units were found to be slightly less. Accordingly, seizure memo was issued by respondent No.2 and the said consignment of the Cadbury Dairy Milk Chocolate 13 gm valued at Rs.14,25,000/- was seized on the ground that the average weight was found to be 0.313 gms less than the printed weight of 13 gm.

4. Petitioners informed the respondent No.2 that the said Cadbury Dairy Milk Chocolate weighed 13 gr per piece was entirely exempted from the coverage of the Packaged Commodity Rules in view of the provisions of Rule 34(b) which inter alia exempts packages of weight less than 20 grams when sold by weight from all the provisions of Packaged Commodity Rules. Petitioners by their letter dated 22/1/2003 addressed to the respondent No.2 submitted that the action of the respondents was arbitrary in view of Rule 34(b) of the Packaged Commodity Rules.

5. Respondent No.1 issued notice dated 3rd February, 2003 to the petitioners asking them to furnish the names and designations of the Directions of the petitioner No.1 Company.

6. Being aggrieved by the seizure of the commodities by the respondent No.2 and the notice which was issued by respondent No.1, petitioners filed this writ petition under Art.226 of the Constitution of India. This court granted rule and further directed that the goods which was seized by seizure memo dated 22/1/2003 may be released on the petitioners furnishing bank guarantee to the tune of Rs.14 lac.

7. Assistant Controller of Legal Metrology, Thane filed affidavit in reply. In the affidavit in reply also some contention was raised by the respondents stating therein that there was violation of Sec.33 Standard of Weights and Measures(Enforcement) Act, 1985 read with the Rule 24 of the said rules. It was contended in the affidavit in reply that the only packages below 10 gm were exempted and that the packages in question were of 13 gm.

8. We have heard the learned counsel appearing for the petitioners and respondents. Submissions made by the learned counsel for the petitioners will have to be accepted. Rule 34 of the said rules read as under:-

> “34. Exemption in respect of certain packages. Nothing contained in these rules shall apply to any package containing a commodity if,-
>
> (a).....
>
> (b) the net weight or measures of the commodity is twenty grams or twenty millilitres or less, if sold by weight or measure:
>
> PROVIDED that this exemption shall not apply to package containing any drug or medicine:
>
> PROVIDED that the declaration in respect of maximum retail price and net quantity shall be declared on packages containing 10g to 20g or 10 ml to 20 ml.
>
> c).....
>
> d).....
>
> e).....
>
> f).....”

9. In the present case quantity of the package was 13 gm which is admittedly less than 20 gm. In view of rule 34(b) proviso, the said rule does not apply to the said package. It is submitted by the learned counsel for the respondents that exemption is applicable only to packages which weighed less than 10 gm is incorrect as is evident from the rule 34(b). Apart from that other proviso to rule 34(b) has already been complied with by the petitioners and there is declaration in respect of maximum retail price and net quantity has been declared on the packages.

10. In the result writ petition is, therefore, allowed. Seizure memo dated 22/1/2003 which is annexed at Ex.B is set aside and notice dated 3/2/2003 which is annexed at Ex.F are quashed and set aside. Bank guarantee given by the petitioners is discharged. Writ petition is made absolute in terms of prayer clause a. Under these circumstances, there is no order as to costs.

V.G. PALSHIKAR, J.

V.M. KANADE, J.